

FILED	LODGED
RECEIVED	COPY
DEC 05 2008	
CLERK U S DISTRICT COURT	
DISTRICT OF ARIZONA	
BY	DEPUTY

FILED	LODGED
RECEIVED	COPY
FEB 18 2009	
CLERK U S DISTRICT COURT	
DISTRICT OF ARIZONA	
BY	DEPUTY

1 DIANE J. HUMETEWA  
 2 United States Attorney  
 3 District of Arizona

4 JOHN BOYLE  
 5 Assistant U.S. Attorney  
 6 Two Renaissance Square  
 7 40 N. Central Avenue, Suite 1200  
 8 Phoenix, Arizona 85004-4408  
 9 Arizona State Bar No. 015640  
 10 Telephone (602) 514-7500

11 CLERK U S DISTRICT COURT  
 12 DISTRICT OF ARIZONA

13 DEPUTY

14 UNITED STATES DISTRICT COURT  
 15 DISTRICT OF ARIZONA

16 United States of America,

17 Plaintiff,

18 v.

19 Bryan Andrew Kreskow,

20 Defendant.

21 CR-08-00764-001-PHX-NVW

22 **PLEA AGREEMENT**

23 Plaintiff, United States of America, and defendant, Brian Andrew Kreskow, hereby agree  
 24 to the following disposition of this matter:

25 **PLEA**

26 Defendant will plead guilty to Count 4 of an Indictment charging defendant with  
 27 Transactional Money Laundering, in violation of Title 18, United States Code, Section 1957, a  
 28 Class C felony offense.

1. **MAXIMUM PENALTIES**

a. A violation of Title 18, United States Code, Section 1957 is punishable by a maximum term of imprisonment of ten years and a maximum term of supervised release of three years. The court may impose either a maximum fine of \$250,000.00 or a fine up to twice the amount of the criminally derived property involved in the transaction.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the court shall:

14 15 **SCANNED**

(1) Order the defendant to make restitution to any victim of the offense unless, pursuant to Title 18, United States Code, Section 3663, the court determines that restitution would not be appropriate in this case;

(2) Order the defendant to pay a fine, which may include the costs of probation, supervised release or incarceration, unless, pursuant to Title 18, United States Code, Section 3611, the defendant establishes the applicability of the exceptions found therein;

(3) Order the defendant, pursuant to Title 18, United States Code, Section 3583 to serve a term of supervised release when required by statute or when a sentence of imprisonment of more than one year is imposed, and the court may impose a term of supervised release in all other cases.

c. Pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$ 100 special assessment upon conviction for the charged crime.

## 2. AGREEMENTS REGARDING SENTENCING

a. **Stipulation:** Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant stipulate that the defendant's sentence in this case shall not exceed nine (9) months imprisonment.

b. **Stipulation:** Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant stipulate that the Defendant will waive the Fifth Amendment privilege against self-incrimination and if called by any party will testify at a civil or criminal trial, retrial or post-trial hearing involving Abdul Salih.

c. Recommendation-Acceptance of Responsibility: Assuming the defendant makes full and complete disclosure to the Probation Department of the circumstances surrounding the defendant's commission of the offense and, if the defendant demonstrates an acceptance of responsibility for this offense up to and including the time of sentencing, the United States will recommend a two-point reduction in the applicable sentence guideline offense level, pursuant to Section 3E1.1 of the Guidelines. If the defendant has an offense level of 16 or more, the

1 United States will recommend an additional one-level reduction in the applicable sentencing  
2 guideline offense level, pursuant to Section 3E1.1 of the Guidelines

3 d. **Recommendation:** Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will  
4 recommend the defendant be sentenced to a term of probation.

5 e. Defendant understands that recommendations are not binding on the Court. The  
6 defendant further understands that the defendant will not be permitted to withdraw the guilty  
7 plea if the Court does not follow a recommendation.

8 f. If the Court, after reviewing this plea agreement, concludes that any provision is  
9 inappropriate, it may reject the plea agreement, giving the defendant, in accordance with  
10 Fed. R. Crim. P. 11(c)(5), and the government an opportunity to withdraw the guilty plea.

11  
12 3. **AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

13 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States will dismiss the  
14 following charges: Counts 1,2,& 3.

15 b. This office will not prosecute the defendant for any offenses committed by the  
16 defendant, and known by the government, in connection with this money laundering  
17 investigation conducted by IRS and FBI concerning the years 2005-2007. The Defendant  
18 understands that if he fails to follow the terms of Section 2(b) of this plea agreement, the  
19 government will be free to prosecute the defendant for charges related to this investigation,  
20 including counts dismissed in this indictment.

21 c. This agreement does not, in any manner, restrict the actions of the United States  
22 in any other district nor bind any other United States Attorney's Office.

23  
24 4. **WAIVER OF DEFENSES AND APPEAL RIGHTS**

25 Providing the sentence is consistent with this agreement, the defendant waives: (1) any  
26 and all motions, defenses, probable cause determinations, and objections which the defendant  
27 could assert to the indictment or information; (2) any right to file an appeal, any collateral attack,  
28 or any other writ or motion that challenges the conviction, the Court's entry of judgment against

1 defendant, or the imposition of sentence, including the manner in which the sentence is  
2 determined, including but not limited to an appeal under Title 18, U.S.C., Section 3742 and  
3 motions under Title 28, U.S.C., Sections 2241 and 2255. The defendant acknowledges that if  
4 the court has sentenced defendant according to the terms of the agreement, this waiver shall  
5 result in the dismissal of any appeal, collateral attack, or other motion the defendant might file  
6 challenging the conviction or sentence in this case.

7 **5. PERJURY AND OTHER FALSE STATEMENT OFFENSES OR OTHER**  
8 **OFFENSES**

9 Nothing in this agreement shall be construed to protect the defendant in any way from  
10 prosecution for perjury, false declaration or false statement, or any other offense committed by  
11 defendant after the date of this agreement. Any information, statements, documents, and  
12 evidence which defendant provides to the United States pursuant to this agreement may be used  
13 against the defendant in all such prosecutions.

14 **6. REINSTITUTION OF PROSECUTION**

15 If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the  
16 United States will be free to prosecute the defendant for all charges of which it has knowledge,  
17 and any charges that have been dismissed because of this plea agreement will be automatically  
18 reinstated. In such event, defendant waives any objections, motions, or defenses based upon the  
19 Statute of Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later  
20 charges or proceedings. The defendant understands that any statements made at the time of the  
21 defendant's change of plea or sentencing may be used against the defendant in any subsequent  
22 hearing, trial or proceeding as permitted by Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

23 The Defendant understands that if he fails to follow the terms of Section 2(b) of this plea  
24 agreement, the government will be free to prosecute the defendant for charges related to this  
25 investigation, including counts dismissed in this indictment.

26

27

28

1  
2. **DISCLOSURE OF INFORMATION TO U.S. PROBATION OFFICE**

3. a. The defendant will cooperate fully with the United States Probation Office. Such  
4. cooperation will include providing truthful statements in response to questions posed by the  
5. Probation Department including, but not limited to:

6. (1) Disclosure of all criminal convictions, history of drug abuse, and history  
7. of mental illness; and

8. (2) All financial information, e.g., present financial assets or liabilities that  
9. relate to the ability of the defendant to pay a fine or restitution.

10. **FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

11. a. Nothing in this agreement shall be construed to protect the defendant from civil  
12. forfeiture proceedings or prohibit the United States from proceeding with and/or initiating an  
13. action for civil forfeiture.

14. b. Further, this agreement does not preclude the United States from instituting any  
15. civil or administrative proceedings as may be appropriate now or in the future.

16.  
17. **ELEMENTS**

18. Count 4: On and about November 9, 2006, in the District of Arizona:

19. 1. The defendant knowingly engaged or attempted to engage in a monetary transaction;  
20. 2. The defendant knew the transaction involved criminally derived property;  
21. 3. The property had a value of greater than \$10,000;  
22. 4. That the property was, in fact, derived from bank fraud; and  
23. 5. The transaction occurred in the United States.

24. **FACTUAL BASIS**

25. I further admit the following facts are true and that if this matter were to proceed to trial  
26. the United States could prove the following facts beyond a reasonable doubt:

27. On November 9, 2006, in the District of Arizona, Brian Andrew Kreskow, knowingly  
28. engaged in a monetary transaction, that affected interstate commerce, through financial

1 institution Countrywide Home Loans in criminally derived property of a value greater than  
2 \$10,000. The property was criminally derived by committing bank fraud, in violation of 18  
3 U.S.C. § 1343.

4 Specifically, on October 12, 2006, in Maricopa County, Arizona, the Defendant applied  
5 for and received a loan in the amount of \$247,920.00 from Countrywide Home Loans. The  
6 defendant caused Countrywide to wire the proceeds of this loan (\$225,789.08) to an escrow  
7 account with America's Wholesale Lender. Countrywide conducted this monetary transaction  
8 on November 9, 2006, by means of a wire deposit from New Jersey to Arizona. In order to  
9 qualify for the loan, the Defendant signed the October 12, 2006 loan application knowing that  
10 it incorrectly listed his income as \$7,000 per month. In fact, the defendant knew that his income  
11 at this time was less than \$3,500 per month. Countrywide funded the loan based on the  
12 defendant's fraudulent application.

13 The defendant's loan permitted the Defendant to purchase real property located at 21634  
14 North 30<sup>th</sup> Lane, Phoenix, Arizona. The defendant entered into an agreement with Abdul Salih  
15 regarding the management of this property. Included in the terms of the agreement : Abdul Salih  
16 would manage the property and its upgrades, collect rentals, provide funds to Kreskow for the  
17 monthly mortgage payments, and in return the defendant agreed to make monthly mortgage  
18 payments and split future real estate profits with Salih.

19  
20 I understand that I will have to swear under oath to the accuracy of this statement, and if  
21 I should be called upon to testify about this matter in the future, any intentional material  
22 inconsistencies in my testimony may subject me to additional penalties of perjury or false  
23 swearing which may be enforced by the United States under this agreement.

24 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

25 I have read each of the provisions of the entire plea agreement with the assistance of  
26 counsel and understand its provisions.

27 I have discussed the case and my constitutional and other rights with my attorney. I  
28 understand that by entering my plea of guilty I will be giving up my rights to plead not guilty,

1 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present  
2 evidence in my defense, to remain silent and refuse to be a witness against myself by asserting  
3 my privilege against self-incrimination -- all with the assistance of counsel -- and to be presumed  
4 innocent until proven guilty beyond a reasonable doubt.

5 I agree to enter my guilty plea as indicated above on the terms and conditions set forth  
6 in this agreement.

7 I have been advised by my attorney of the nature of the charges to which I am entering  
8 my guilty plea. I have further been advised by my attorney of the nature and range of the  
9 possible sentence and that my ultimate sentence will be determined after consideration of the  
10 advisory Sentencing Guidelines. I understand that the Sentencing Guidelines are only advisory  
11 and that the Court is free to exercise its discretion to impose any reasonable sentence up to the  
12 maximum set by statute for the crimes of conviction unless there are stipulations to the contrary.  
13 I understand that the Guideline Range referred to herein or discussed with my attorney is not  
14 binding on the court and is merely an estimate.

15 My guilty plea is not the result of force, threats, assurances or promises other than the  
16 promises contained in this agreement. I agree to the provisions of this agreement as a voluntary  
17 act on my part and I agree to be bound according to its provisions.

18 I fully understand that, if I am granted probation or placed on supervised release by the  
19 court, the terms and conditions of such probation/supervised release are subject to modification  
20 at any time. I further understand that, if I violate any of the conditions of my  
21 probation/supervised release, my probation/supervised release may be revoked and upon such  
22 revocation, notwithstanding any other provision of this agreement, I may be required to serve  
23 a term of imprisonment or my sentence may otherwise be altered.

24 I agree that this written plea agreement contains all the terms and conditions of my plea  
25 and that promises made by anyone (including my attorney), and specifically any predictions as  
26 to the guideline range applicable, that are not contained within this written plea agreement are  
27 without force and effect and are null and void.

28 I am satisfied that my defense attorney has represented me in a competent manner.

1 I am fully capable of understanding the terms and conditions of this plea agreement. I  
2 am not now on or under the influence of any drug, medication, liquor, or other intoxicant or  
3 depressant, which would impair my ability to fully understand the terms and conditions of this  
4 plea agreement.

5 I have carefully reviewed every part of this agreement with my attorney. I understand it,  
6 and I voluntarily agree to it.

7 12-3-08

8 Date

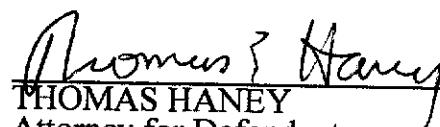
9   
10 Brian Andrew Kreskow  
11 Defendant

**DEFENSE ATTORNEY'S APPROVAL**

12 I have discussed this case and the plea agreement with my client, in detail and have  
13 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional  
14 and other rights of an accused, the factual basis for and the nature of the offense to which the  
15 guilty plea will be entered, possible defenses, and the consequences of the guilty plea including  
16 the maximum statutory sentence possible. I have further discussed the concept of the advisory  
17 sentencing guideline with the defendant. No assurances, promises, or representations have been  
18 given to me or to the defendant by the United States or by any of its representatives which are  
19 not contained in this written agreement. I concur in the entry of the plea as indicated above and  
20 on the terms and conditions set forth in this agreement as in the best interests of my client. I  
21 agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all  
22 the requirements of Fed. R. Crim. P. 11.

23 12-5-08

24 Date

25   
26 THOMAS HANEY  
27 Attorney for Defendant

### **UNITED STATES' APPROVAL**

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

DIANE J. HUMETEWA  
United States Attorney  
District of Arizona

Date

**JOHN BOYLE**  
Assistant U.S. Attorney

### COURT'S ACCEPTANCE

Date

NEIL V. WAKE  
United States District Judge